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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

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Application by SBC Communications Inc.,  
Southwestern Bell Telephone Company, and  
Southwestern Bell Communications Services,  
Inc. d/b/a/ Southwestern Bell Long Distance  
for Provision of In-Region, InterLATA  
Services in Texas

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CC Docket No. 00-4

**REPLY COMMENTS OF BLUESTAR COMMUNICATIONS, INC.**

BlueStar Communications, Inc. on behalf of itself and its affiliates (collectively, "BlueStar"), submits these reply comments in response to initial comments submitted with respect to the above-captioned application of SBC Communications, Inc. ("SBC") for authority under Section 271 of the Act to offer interLATA services in Texas. The initial comments of BlueStar and others amply demonstrate that SBC's application is premature and should be denied.

**The DOJ Recommendation Should Be Accepted**

BlueStar concurs with DOJ that SBC has made significant progress towards qualifying for interLATA approval in Texas.<sup>1</sup> The T2A goes a long way towards establishing adequate standards for interconnection with CLECs and provision of essential services and facilities. However, performance consistent with acceptable standards remains critical. While BlueStar is not currently providing service in Texas and does not have direct experience with SBC in Texas, it knows from experience with BellSouth that actual and promised performance are two different things. In the area of unbundled loops for advanced services, as described below, and in other

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<sup>1</sup> DOJ Evaluation at 2.

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areas, SBC falls short of requirements. Moreover, it is not feasible within the time frame of the present application to obtain sufficient real world experience to evaluate whether any corrective measures by SBC are genuinely working.<sup>2</sup> Accordingly, the Commission should deny the application with directions to SBC concerning where performance must improve. The Commission should state that further experience is necessary in order to know whether SBC is providing services to xDSL competitors on a nondiscriminatory basis. This approach, rather than a hurry-up approval, would provide the best assurance of compliance with Section 271.

### **SBC Does Not Provide Nondiscriminatory Access to xDSL-Capable Loops**

Prominent among the deficiencies in SBC's application is that it has not shown that it provides access to xDSL-capable loops on a nondiscriminatory basis. Covad and Northpoint point out that SBC's performance data is based on the artifice of simply omitting relevant data, such as a large number of orders submitted by these carriers, thus showing far better performance than is actually the case.<sup>3</sup> DOJ concludes that SBC's performance data are unreliable because, *inter alia*, SBC does not measure response time from the time a request is made; SBC excluded DSL FOCs from its performance measures; SBC omitted data; and it is not clear that loops are actually installed when SBC claims to have done so.<sup>4</sup>

Moreover, even under the inaccurate presentation of its xDSL-capable loops, SBC's own data show discrimination against data CLECs. For example, SBC misses due dates for CLECs

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<sup>2</sup> *Id.* at 3.

<sup>3</sup> Covad at 27, 28; Northpoint at 2.

<sup>4</sup> DOJ Evaluation at 12-17.

12.1% of the time but only 6.3% for its own retail services.<sup>5</sup> Similarly, it missed due dates by more than 30 days 6.7% of the time for CLECs but only 0.6% for its own provisioning.<sup>6</sup> Further, DSL providers operating in Texas point out that SBC's performance in promptly returning a FOC in response to an order has significantly deteriorated over the last few months as orders have increased.<sup>7</sup> Accordingly, as pointed out by BlueStar and others in initial comments, SBC has not shown that it is providing xDSL-capable loops on a nondiscriminatory basis.

### **SBC's Advanced Services Affiliate Is Not Operational**

In the *Bell Atlantic New York Section 271 Order*, the Commission stated that future applicants would have the option of demonstrating nondiscriminatory treatment of xDSL<sup>8</sup> competitors by implementing a fully operational, separate affiliate for advanced services. SBC's advanced services affiliate is not fully operational in Texas. As pointed out by other commenters, the Commission should require Section 271 applicants to present some experience with the advanced services affiliate that demonstrates that the affiliate mechanism is effective in achieving nondiscrimination.<sup>9</sup> Given that SBC has failed to show that it is currently providing xDSL-capable loops on a nondiscriminatory basis, the Commission should rely on more than SBC's untested promise of a separate affiliate to cure discrimination against data CLECs.

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<sup>5</sup> *Id.* at 18.

<sup>6</sup> *Id.* at 19.

<sup>7</sup> Covad at 35.

<sup>8</sup> *Bell Atlantic New York Section 271 Order*, para 330.

<sup>9</sup> DOJ Evaluation at 26.

Accordingly, SBC's application should not be granted on the basis of a separate advanced services affiliate.

### **The Commission Should Not Repeat the Bell Atlantic Experience**

Recent experience with Bell Atlantic shows that its OSS systems are not able to adequately process large volumes of orders. Deficiencies in Bell Atlantic-New York's OSS are, among other things, causing wholesale orders to drop out of the normal OSS systems and substantially delaying the ability of consumers to move their service to competitive local exchange carriers. These deficiencies have required corrective action by the New York Public Service Commission.<sup>10</sup>

To be frank, these problems show that the Commission erroneously granted the Bell Atlantic New York application. Bell Atlantic did, and does, not have adequate OSS in place to warrant a conclusion that it has complied with Section 271. SBC's OSS systems in Texas are no better than Bell Atlantic's and are probably worse. DOJ notes that SBC is currently having difficulty in processing orders as volume rises.<sup>11</sup> Accordingly, the Commission could not conclude on the present record that SBC has met its OSS obligations sufficient to warrant a grant of the application.

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<sup>10</sup> *Order Directing Improvements to Wholesale Service Performance*, Complaints of MCI WorldCom and AT&T Communications of New York, Inc., Case Nos. 00-C-0008, 00-C-0009, released February 11, 2000.

<sup>11</sup> DOJ Evaluation at 36.

### **The Commission Should Encourage SBC to Implement the Texas Requirements in Other States**

BlueStar reiterates that the requirements adopted in Texas could provide a useful model in other states.<sup>12</sup> BlueStar encourages the Commission, under the public interest standard of Section 271(D)(3)(C), to take steps to assure that SBC implements these steps throughout its region. It makes little sense to rearbitrate these issues in every state, or to implement them only in states where SBC is likely to apply for Section 271 authority in the relatively near future. The Commission should also require SBC to demonstrate that it is in full compliance with the SBC/Ameritech merger conditions. These steps will help assure that any authorization to SBC to offer long distance service, once it has otherwise complied with Section 271, will serve the public interest.

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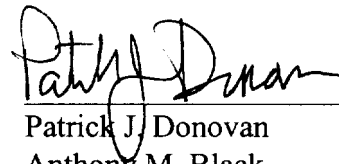
<sup>12</sup> BlueStar Comments at 7.

### **Conclusion**

Initial comments submitted in this proceeding amply demonstrate that SBC fails to qualify for interLATA authority in Texas based on the present application. The Commission should accept DOJ's recommendation and deny the application.

Respectfully submitted,

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